Equality of Opportunity and Freedom from Discrimination

MHR Connections

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Adjudicator decides damage to dignity offer is not enough in service animal case

The impact of discrimination was at the centre of a recent human rights decision. For the first time an adjudicator had to consider what was a sufficient monetary amount for damage to dignity, feelings and self respect when an allegation of discrimination is based on the use of a service dog.

Not all disabilities are visible.

The problem of deciding what would be an appropriate sum of money is that there are no cases in Manitoba under *The Human Rights Code* that involve discrimination in provision of services against a person who relies on a service animal to assist managing mental health symptoms.

The Manitoba Human Rights Commission Legal Counsel Isha Khan argued that general damages are case specific and that awards in past cases of discrimination are guidelines only and not the determining factor.

Adjudicator Manning decided that a $5,500 settlement offer by the City of Brandon Police Services was not enough. The offer had been rejected earlier by the complainant, Billy-Joe Nachuk. He alleged that he was discriminated against when he was escorted out of a bar by police officers because he had a service animal.

Mr. Nachuk is a decorated Canadian Forces member who at that time had been diagnosed with post traumatic stress syndrome. He took training with a service dog from the Manitoba Search and Rescue Elite Service Dog Program to help minimize his functional limitations.

Adjudicator Manning wrote that the offer was not reasonable as Mr. Nachuk was particularly vulnerable. He also commented on the expectation that police are to uphold and not transgress *The Human Rights Code*. "This is enshrined in legislation as the preamble to the *Police Services Act*, S.M. c. 32 which states, AND WHEREAS the importance of safeguarding the fundamental rights protected by the *Canadian Charter of Rights and Freedoms* and *The Human Rights Code* is recognized by all."

continued on page 2

The Rights Connections
by Azim Jiwa - Executive Director

Time to listen - a service animal is not a pet

We still have a long way to go when it comes to service animals and human rights in Manitoba. After the opposing story ran in the media earlier this month, we received calls from many people telling us how they were questioned at shopping malls or refused service at hotels for trying to enter with a service dog. Some concerns were surprising as the disability was obvious; others a result of not understanding the need of service animals for invisible disabilities such as a brain injury, epilepsy or post traumatic stress disorder.

It is difficult enough when the public does not understand; it is unacceptable when service providers do not.

Services available to the public such as stores, hotels, schools or hospitals have a duty to accommodate individuals with disabilities who rely on service animals, unless it would be an undue hardship for them to do so. The rights of individuals with disabilities who use service animals are protected from discrimination under Manitoba's Human Rights Code.

The Human Rights Code defines a service animal as an animal that has been trained to provide assistance to a person with a disability that relates to that persons visible or invisible disability. Most people who use an animal assistant will have papers to confirm the animal is trained. Unfortunately those who use animal assistants are still told that the service is not available due to a **no pet policy**. Again it must be stated that a **service animal is not a pet.**

At the Manitoba Human Rights Commission we understand that service providers need clarification as what is a service dog and how to identify one. Although difficult, the Commission will attempt to recommend to the Government of Manitoba ways to clarify the difference between a service animal and one that is not. In September we are planning round table discussions to examine various means to make this problem of identifying service animals clearer. If you are interested in taking part, please contact us at hrc@gov.mb.ca.

Also call, email or visit one of our offices if you or a friend or family member has experienced discrimination due to the presence of a service animal.

continued from page 1

According to Mr. Nachuk, he filed the human rights complaint after he and a friend went to a bar to socialize. Although he produced his service dog's certification papers, the Police, who were already present, were called to the table and words exchanged. Mr. Nachuk was eventually escorted off the premises by the officers. Mr. Nachuk claimed he was totally degraded.

When an adjudicator is asked to assess whether a Respondent has made a reasonable settlement offer, the adjudicator must decide if the offer approximates what the award could be if the discrimination was proven in a hearing. At this point, there has not yet been a hearing of the complaint and a finding of discrimination. This process ensures that an expensive adjudication can be avoided when a Respondent volunteers to remedy the complaint before the hearing. If the offer is not reasonable a full adjudication hearing would follow.

Human Rights Adjudicators are independent from the Human Rights Commission and appointed by the Government of Manitoba.

Discrimination as defined in *The Human Rights Code* includes a failure to reasonably accommodate an individual who has a protected characteristic under *The Code*, such as a mental or physical disability.

The full decision can be found on the Commission's website www.manitobahumanrights.ca.

Event raises money for women's rights

When Sally Armstrong comes to town, people tend to listen and that is what the audience did on May 9, 2014 in Winnipeg. Her presentation was part of a fundraiser for gender equality and the advancement of women's rights locally and globally. Three projects were supported: Grands 'N' More, part of the Stephen Lewis Foundation; The Equality Effect - which advocates for women and girls in Africa; and Global Citizenship Scholarships at the University of Winnipeg for students studying and working for international women's rights. The event, called "A New Age is Dawning for Every Mother's Daughter" was hosted by the Institute for International Women's Rights – Manitoba.

Amnesty International award winner, and well known author and journalist Sally Armstrong was in Winnipeg earlier this month.

Ms Armstrong's message was one of hope for women's rights and that the tide was turning. She talked about women and girls in the conflict areas fighting for their own rights and the impressive role of social media assisting those women and girls to organize and advocate for themselves.

The event also featured a poetry reading by Governor General Award recipient Katherena Vermette and a special musical performance by Keith and Renee.

A most impressive group of human rights experience

Earlier this month was the 25th anniversary of the landmark Supreme Court of Canada decision which dealt with sexual harassment in the workplace (Janzen v. Platy Enterprises Ltd.) The 2014 Canadian Association for the Prevention of Discrimination and Harassment in Higher Education Conference celebrated by having three of the main players take centre stage.

The moderator of the session was the Manitoba Human Rights Commission Executive Director Azim Jiwa who explained that each panel member played a crucial role in changing the lives of women across the country.

During the course of her presentation, Dianna Evangeline brought the reality of her situation to the audience. All could imagine themselves as the young woman in 1982 who was repeatedly sexually harassed at her workplace.

Ms Evangeline's powerful memories of that time and her insight into sexual harassment in the workplace today, spellbound the audience.

The man who made the bold decision that sexual harassment was discrimination based on sex was Yude Henteleff. He also found that employers have a responsibility to provide a safe and healthy working environment free of harassment. The Winnipeg lawyer, and human rights adjudicator at the time, saw that decision questioned through various court levels over seven years. Although his decision was finally upheld by the Supreme Court of Canada, Mr. Henteleff stated that sexual harassment still exists in Canada and we have to do a better job.

The final speaker in this extraordinary journey was Aaron Berg, the lawyer who was given the task to fight for Mr. Henteleff's original human rights decision at the Supreme Court of Canada, and won. Mr. Berg thanked Dianna and others like her and said that we all owe her so much.

At the end of the session Dianna Evangeline received a standing ovation, and said, "Thank you, I feel like a rock star," at which time someone in the audience replied, "You are."

From left to right: Aaron Berg, general counsel with Manitoba Justice and for twenty years acted as counsel for the Manitoba Human Rights Commission; Stephen Hammond an author and educator in the field of workplace and community human rights; Dianna Evangeline is one of two waitresses who, by filing a sexual harassment complaint in 1982, changed the lives of Canadian women; Dianna Scarth, former Executive Director of the Manitoba Human Rights Commission; Azim Jiwa current Executive Director of the Manitoba Human Rights Commission; and Yude Henteleff, a Winnipeg lawyer, the 2008 Human Rights Commitment Award recipient and a human rights advocate known for his work on behalf of vulnerable people in Canada and around the world.